

In the United States District Court
For the Northern District of Alabama

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U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

FORM FOR USE IN APPLICATION FOR
HABEAS CORPUS UNDER 28 U.S.C. § 2254

CIVIL ACTION NUMBER:

207-cv-4167-MEF

(To be supplied by the Clerk of the District Court)

Terry Armstrong
Full Name of Plaintiff-Petitioner

Ventress Correctional Facility
Place of Confinement

VS.

J. C. Giles Warden
(Name of Warden, Superintendent, Jailer, or authorized
person having custody of petitioner)

and

THE ATTORNEY GENERAL OF THE STATE OF ALABAMA,
Respondents

(If petitioner is attacking a judgment which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgment was entered. If petitioner has a sentence to be served in the future under a federal judgment which he wishes to attack, he should file a motion under 28 USC § 2255, in the federal court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A
PERSON IN STATE CUSTODY

INSTRUCTIONS -- READ CAREFULLY

- (1) This petition must be legibly handwritten or typewritten and signed by the petitioner under penalty of perjury. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form.
- (2) Do not use this form unless you were convicted in one of the following counties: BIBB, BLOUNT, CALHOUN, CHEROKEE, CLAY, CLEBURN, COLBERT, CULLMAN, DEKALB, ETOWAH, FAYETTE, FRANKLIN, GREENE, JACKSON, JEFFERSON, LAMAR, LAUDERDALE, LAWRENCE, LIMESTONE, MADISON, MARION, MARSHALL, MORGAN, PICKENS, SHELBY, ST. CLAIR, SUMTER, TALLADEGA, TUSCALOOSA, WALKER, WINSTON.

SCANNED

- (3) Upon receipt of a fee of \$5 your petition will be filed if it is in proper order.
- (4) If you do not have the necessary filing fee, you may request permission to proceed *in forma pauperis*, in which event you must execute the declaration on the last page, setting forth information establishing your inability to prepay the fees and costs or give security therefor.
- (5) Only judgments entered by one court may be challenged in a single petition. If you seek to challenge judgments entered by different courts either in the same state or in different states, you must file separate petitions as to each court.
- (6) Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgment of conviction.
- (7) When the petition is fully completed, the original and two copies must be mailed to the Clerk of the United States District Court for the Northern District of Alabama, 104 Federal Courthouse, 1800 Fifth Avenue, North, Birmingham, Alabama 35203.
- (8) Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. Name and location of court which entered the judgment of conviction under attack
IN The Circuit Court of Jefferson County
2. Date of judgment of conviction 1997 Month of August
3. Length of sentence 30 years
4. Nature of offense involved (all counts)
5. What was your plea? (Check one)
 - (a) Not guilty
 - (b) Guilty
 - (c) Nolo contendere
 If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:
6. Kind of trial: (Check one)
 - (a) Jury
 - (b) Judge only
7. Did you testify at the trial?
Yes No

8. Did you appeal from the judgment of conviction?
Yes No

9. If you did appeal, answer the following:
(a) Name of court Jefferson County
(b) Result Denied
(c) Date of result 24th day of May 2006

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any court, state or federal?
Yes No

11. If your answer to 10 was "yes," give the following information:
(a) (1) Name of court Alabama Criminal Court of Appeal
(2) Nature of proceeding Rule 3a Petition
(3) Grounds raised The court was without jurisdiction to render the judgment or to impose the sentence.
The sentence imposed exceeds the maximum authorized by law,
or is otherwise not authorized by law.
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No
(5) Result Ruling was Affirmed
(6) Date of result October 27th 2006
(b) As to any second petition, application or motion give the same information:
(1) Name of court _____
(2) Nature of proceeding _____
(3) Grounds raised _____
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No
(5) Result _____
(6) Date of result _____
(c) As to any third petition, application or motion, give the same information:
(1) Name of court _____
(2) Nature of proceeding _____
(3) Grounds raised _____
(4) Did you receive an evidentiary hearing on your petition, application or motion?
Yes No

N/A

(5) Result _____

(6) Date of result _____

(d) Did you appeal to the highest state court having jurisdiction the result of action taken on any petition, application or motion?

(1) First petition, etc Yes No ()

(2) Second petition, etc Yes No ()

(3) Third petition, etc Yes No ()

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not: _____

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

Caution: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies as to each ground on which you request action by the federal court. If you fail to set forth all grounds in this petition, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted your state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief you must allege facts. The petition will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand jury or petit jury which was unconstitutionally selected and impaneled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: See attached sheet

Supporting FACTS (tell your story briefly without citing cases or law): See attached sheet

B. Ground two: See attached sheet

Supporting FACTS (tell your story briefly without citing cases or law): See attached sheet

C. Ground three: See attached sheet

Supporting FACTS (tell your story briefly without citing cases or law): See attached sheet

D. Ground four: See attached sheet

Supporting FACTS (tell your story briefly without citing cases or law): See attached sheet

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court, state or federal, state briefly what grounds were not so presented, and give your reasons for not presenting them: See attached sheet

14. Do you have any petition or appeal now pending in any court, either state or federal, as to the judgment under attack?

Yes () No (✓)

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing J. Scott Boudreaux

(b) At arraignment and plea Same as above

(c) At trial Same as above

(d) At sentencing Same as above

(e) On appeal Same as above

(f) In any post-conviction proceeding Same as above

(g) On appeal from any adverse ruling in a post-conviction proceeding NA

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?
 Yes No

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?
 Yes No

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?
 Yes No

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

Henry Armstrong pro se
 Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on _____ (Date)

Henry Armstrong
 Signature of Petitioner

Attached Sheet

Ground One: Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and consequences of the plea.

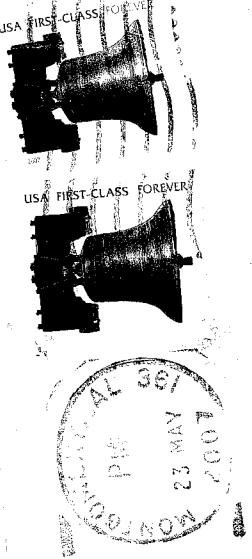
Supporting Facts; Petitioner argues that he received too much time for offense, whereas the offense of assault second degree a class c felony provides punishment of 1 year 1 day no more than 10 years. Petitioner was sentenced to 30 years and there is no record of the court giving notice of intent to enhance sentence. Petitioner's plea agreement only states that petitioner plead guilty to assault second degree the court accepted the petitioner's plea and sentenced petitioner to 30 years. There is no statement within the petitioner's plea agreement that the court was proceeding under the Habitual Felony Offender Act. Wherefore, there is no record that petitioner was adjudicated as an Habitual Felony Offender, the court was without jurisdiction to render or impose sentence of 30 years for a Class C Felony.

Ground Two: Denial of Effective Assistance of Counsel.

Supporting Facts: Petitioner's attorney had actual knowledge that the court did not have any evidence that petitioner had been previously convicted of any priors, therefore petitioner's attorney was ineffective for failing to allow the petitioner to plead guilty to 30 years.

Ground 12A was not presented.

Reason: I did not present them because I was waiting for my attorney to send me all the proper information I requested concerning this case so that I could file my Rule 32 petition.



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Legal
Mail

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an Alabama State Prison. The contents have
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